



[Soon]
State of Wisconsin
2009 - 2010 LEGISLATURE

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LRB-0636/P2
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Inserts

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regen. cat.

1 **AN ACT** *to renumber* 168.12 (title), 168.12 (6) (a), 168.12 (6) (f), 168.12 (6) (g) and
2 168.12 (9); *to renumber and amend* 168.01 (2), 168.12 (1), 168.12 (1g), 168.12
3 (1r), 168.12 (5), 168.12 (6) (b), 168.12 (6) (c), 168.12 (6) (d), 168.12 (6) (e), 168.12
4 (6) (h), 168.12 (7), 168.12 (8) (a), 168.12 (8) (b), 168.12 (8) (c), 168.12 (8) (d),
5 168.12 (8) (e) and 168.125; *to amend* 20.566 (1) (s), 20.855 (4) (r), 25.47 (1),
6 98.246 (title), (1) and (2), 168.02, 168.03, 168.04 (3), 168.05 (title), 168.05 (1),
7 168.05 (2), 168.05 (3), 168.05 (4), 168.05 (5), 168.06 (1), 168.06 (2), 168.06 (3),
8 168.07 (1), 168.07 (2), 168.08 (intro.), 168.09, 168.10, 168.11 (1) (a), 168.11 (1)
9 (b) 3., 168.11 (2) (intro.), 168.11 (2) (a), 168.11 (2) (b), 168.11 (2) (c), 168.11 (2)
10 (d), 168.11 (3), 168.11 (4), 168.13, 168.14 (2), 168.14 (2m) (b) 2., 168.14 (2m) (b)
11 3., 168.14 (2m) (c) (intro.), 168.14 (2m) (c) 1., 168.14 (2m) (c) 2., 168.14 (2m) (c)
12 3., 168.15, 168.16 (2), 168.16 (3), 168.17, 227.01 (13) (zd) and 341.45 (1g) (a); *to*
13 *repeal and recreate* 168.14 (title); and *to create* subchapter XIV of chapter
14 77 (precedes 77.9981), 77.9981, 77.9984, 77.9985 and 168.05 (6) of the statutes;

1 **relating to:** fuel products fees and inspection (suggested as remedial
2 legislation by the Department of Commerce).

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Commerce and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

3 **SECTION 1.** 20.566 (1) (s) of the statutes is amended to read:

4 20.566 (1) (s) ~~Petroleum~~ Fuel product inspection fee collection. From the
5 petroleum inspection fund, the amounts in the schedule to cover the cost of collecting
6 the ~~petroleum~~ fuel product inspection fee that is authorized under s. ~~168.12~~ 77.9982
7 (1).

8 **SECTION 2.** 20.855 (4) (r) of the statutes is amended to read:

9 20.855 (4) (r) *Petroleum allowance*. From the petroleum inspection fund, a sum
10 sufficient for the payment of allowances and interest under s. ~~168.12 (6)~~ 77.9982 (5).

11 **SECTION 3.** 25.47 (1) of the statutes is amended to read:

12 25.47 (1) The fees imposed under s. ~~168.12~~ 77.9982 (1).

13 **SECTION 4.** Subchapter XIV of chapter 77 (precedes 77.9981) of the statutes is
14 created to read:

CHAPTER 77

SUBCHAPTER XIV

FUEL PRODUCTS INSPECTION FEES

SECTION 5. 77.9981 of the statutes is created to read:

77.9981 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "Fuel products" has the meaning given in s. ~~168.02~~

168.01(1g)

SECTION 6. 77.9984 of the statutes is created to read:

77.9984 Required records. Every person receiving fuel products in this state shall keep books and records of all fuel products so received, together with bills of lading, waybills, and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the department in regard to the fee under s. 77.9982 (1). Such books, records, and other papers and documents shall be preserved for not less than 4 years, unless the department, and the department of commerce under s. 168.13, in writing, authorizes their destruction or disposal at an earlier date.

SECTION 7. 77.9985 of the statutes is created to read:

77.9985 Access to records. Every agent or employee of any railroad company or other transportation company and every person transporting fuel products having the custody of books or records showing the shipment or receipt of fuel products shall give and permit the department free access to such books and records for the purpose of determining the amount of fuel products shipped and received. All clerks, bookkeepers, express agents, railroad agents, or officials, employees, or common carriers, or other persons shall provide all information in their possession when so requested in tracing and finding such shipments.

SECTION 8. 98.246 (title), (1) and (2) of the statutes are amended to read:

1 **98.246** (title) **Petroleum Fuel product sales.** (1) In this section, “petroleum
2 fuel products” has the meaning given under s. ~~168.02~~ 168.01 (1g)

3 (2) ~~Petroleum Fuel~~ products may not be sold from a terminal or storage facility
4 in this state on any basis other than gross volume without correction for
5 temperature.

6 **SECTION 9.** 168.01 (2) of the statutes is renumbered 77.9981 (3) and amended
7 to read:

8 77.9981 (3) “Supplier” includes a person who imports, or acquires immediately
9 upon import, ~~petroleum fuel~~ products by pipeline or marine vessel from a state,
10 territory, or possession of the United States or from a foreign country into a terminal
11 and who is registered under 26 USC 4101 for tax-free transactions in gasoline.
12 “Supplier” also includes a person who produces in this state; or imports into a
13 terminal or bulk plant; or acquires immediately upon import by truck, railcar, or
14 barge into a terminal; alcohol or alcohol derivative products. “Supplier” also includes
15 a person who produces, manufactures or refines ~~petroleum fuel~~ products in this
16 state. “Supplier” also includes a person who acquires ~~petroleum fuel~~ products
17 pursuant to an industry terminal exchange agreement or by a 2-party exchange
18 under section 4105 of the Internal Revenue Code. “Supplier” does not include a retail
19 dealer or wholesaler who merely blends alcohol with gasoline before the sale or
20 distribution of the product and does not include a terminal operator who merely
21 handles in a terminal ~~petroleum fuel~~ products consigned to the terminal operator.

22 **SECTION 10.** 168.02 of the statutes is amended to read:

23 **168.02 Inspector defined.** “Inspector” means a duly authorized ~~petroleum~~
24 fuel products inspector of the department.

25 **SECTION 11.** 168.03 of the statutes is amended to read:

1 **168.03 Petroleum Fuel products defined.** "Petroleum Fuel products"
2 means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, and
3 diesel fuel.

4 **SECTION 12.** 168.04 (3) of the statutes is amended to read:

5 168.04 (3) Except as otherwise provided in this section, rules promulgated
6 under this section shall be in conformity with nationally recognized standards,
7 specifications, and classifications, such as those published by the American Society
8 for Testing and Materials ASTM International, the Society of Automotive Engineers,
9 and the U.S. Environmental Protection Agency. The department may not
10 promulgate or enforce a rule prohibiting the placement of additional product
11 information on the dispensing device.

12 **SECTION 13.** 168.05 (title) of the statutes is amended to read:

13 **168.05 (title) Inspection of petroleum fuel products.**

14 **SECTION 14.** 168.05 (1) of the statutes is amended to read:

15 168.05 (1) No petroleum fuel product imported into and received in this state
16 or received from a manufacturer or refiner or from a marine or pipeline terminal
17 within this state may be unloaded from its original container except as provided
18 under sub. (5), sold, offered for sale, or used until a true sample of not less than 8
19 ounces is taken as provided in this chapter. This subsection does not apply if the
20 department has previously inspected the petroleum fuel product at the refinery,
21 marine or pipeline terminal. Each person importing or receiving a petroleum fuel
22 product ~~which that~~ has not been previously inspected shall notify the inspector in the
23 person's district of the receipt thereof, ~~and the inspector shall take a sample of the~~
24 petroleum fuel product.

25 **SECTION 15.** 168.05 (2) of the statutes is amended to read:

1 168.05 (2) If such ~~petroleum~~ fuel product is received on a regular business day
2 between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given ~~forthwith~~
3 upon receipt of such ~~petroleum~~ fuel product. If received at any other time, such notice
4 shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular
5 business day. ~~Provided, except that, if any petroleum fuel product is received on~~
6 Saturday, Sunday, or any legal holiday, designated in s. 995.20, such notice shall be
7 given on the next following regular business day between the hours of 7:45 a.m. and
8 10 a.m.

9 [✓]
SECTION 16. 168.05 (3) of the statutes is amended to read:

10 168.05 (3) If the inspector does not, upon proper notice, after a reasonable
11 length of time, take such sample, the recipient of such ~~petroleum~~ fuel product may,
12 in the presence of a disinterested witness, open ~~such~~ the original container and take
13 a true sample of not less than 8 ounces of the contents ~~thereof~~ of the original
14 container. ~~Such~~ The sample shall be immediately placed in a clean container ~~which~~
15 that is in compliance with s. 168.11 (2) and (3) and tightly closed. The recipient shall
16 record upon a label attached to ~~such~~ the container the means of conveyance, the type
17 of original container, the product name and quantity of the contents ~~thereof~~ of the
18 container, and such other information as the department reasonably requires for the
19 proper identification of ~~such~~ the shipment. ~~Such~~ The sample ~~thus taken~~ shall be held
20 for delivery, upon demand, to the inspector. After ~~such~~ the sample is taken ~~such~~
21 ~~petroleum~~ the fuel product may be unloaded, sold, offered for sale, or used the same
22 as if sampled by the inspector. The inspector ^{or the recipient} may discard the sample 7 or more
23 business days after the day on which the sample was taken.

24 [✓]
SECTION 17. 168.05 (4) of the statutes is amended to read:

1 168.05 (4) For the purpose of this section, the following department shall
2 ~~constitute~~ determine what constitutes a reasonable length of time in which an
3 inspector ~~shall~~ may take the a sample herein required: If notice is properly given to
4 an inspector before the hour of 11:45 a.m., the inspector shall take such sample before
5 the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45
6 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the
7 next following regular business day. Saturdays, Sundays, and legal holidays,
8 designated in s. 995.20, shall not be considered regular business days.

9 SECTION 18. 168.05 (5) of the statutes is amended to read:

10 168.05 (5) The department may permit a recipient to unload such petroleum
11 the fuel product prior to inspection if the recipient ~~submits an application setting~~
12 ~~forth good and sufficient reasons, and~~ complies with requirements of sub. (3). The
13 recipient may unload ships or boats without inspection if an emergency is declared
14 by the U.S. coast guard. A recipient must notify the department as required by sub.
15 (2) and the department shall revoke permission granted under this subsection if the
16 recipient violates sub. (2).

17 SECTION 19. 168.05 (6) of the statutes is created to read:

> (18) 168.05 (6) This section does not apply to fuel products that are not sold or
> (19) offered for sale outside of this state.

> ****NOTE: I have changed the language suggested for this created provision because
I was uncertain as to its meaning. The language provided applies this exemption to
"specialty" products. Without a definition, I don't know what those products are. Do you
want to add a definition? Also, the language exempts specialty products that "will not be
introduced into the wholesale or retail market stream." Again, I think this language is
vague so the provision exempts any fuel product that is not sold or offered for sale in this
state. Is this language accurate?

20 SECTION 20. 168.06 (1) of the statutes is amended to read:

1 168.06 (1) For the purposes of administering this chapter, inspectors may take
2 samples of ~~gasoline gasoline-alcohol fuel blends, kerosene, other refined oils, fuel~~
3 ~~oils and petroleum distillates~~ products for tests and make inspections at any points
4 within or without this state, and may open any original container containing
5 ~~gasoline, gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and~~
6 ~~petroleum distillates~~ products and take a true sample of not less than 8 ounces of the
7 contents thereof, even though the original containers may still be in the possession
8 of a common or contract carrier, provided the opening and sampling does not unduly
9 inconvenience or hamper the transportation of the fuel products. After the original
10 containers are opened and sampled ~~the same, the inspector shall be resealed~~ reseal
11 the containers with seals furnished by the department for such purposes. The
12 authority conferred by this section shall be in addition to, and not in limitation of,
13 any of the provisions of s. 168.05.

14 [✓]
SECTION 21. 168.06 (2) of the statutes is amended to read:

15 168.06 (2) If any ~~petroleum~~ fuel product is emptied or transferred into any
16 container ~~in which is contained~~ containing any other grade of ~~petroleum~~ fuel product,
17 then the entire commingling shall be ~~deemed~~ considered uninspected and a sample
18 of such ~~the~~ commingled ~~petroleum product~~ fuel products shall be taken before such
19 ~~the~~ commingled ~~petroleum product~~ fuel products are removed from such ~~the~~
20 container, sold, offered for sale, or used.

21 [✓]
SECTION 22. 168.06 (3) of the statutes is amended to read:

22 168.06 (3) Notice of such ~~the~~ commingling of any ~~petroleum~~ fuel products shall
23 be given in the same manner and subject to the same conditions as notice of the
24 receipts of ~~petroleum~~ fuel products as provided in s. 168.05. The sample of such ~~the~~
25 commingled ~~petroleum~~ fuel products shall be taken by the inspector within a

1 reasonable length of time, as ~~defined and set forth~~ provided in s. 168.05, after notice.
2 If such the inspector does not take such the sample within such that time, the
3 commingler shall take a true sample of not less than 8 ounces of the commingled
4 petroleum fuel products. The taking, sealing, and holding of such the sample by the
5 commingler shall, so far as applicable, be governed by the provisions of s. 168.05
6 relating to ~~the same by~~ a person receiving a petroleum fuel product.

7 **SECTION 23.** [✓] 168.07 (1) of the statutes is amended to read:

8 168.07 (1) The inspector shall inspect ~~each sample~~ samples of petroleum
9 ~~product and if the inspector finds that it meets~~ fuel products to determine whether
10 the samples meet the minimum specifications prescribed by the department, ~~the~~
11 ~~inspector shall issue an inspection certificate, except that inspections for particular~~
12 ~~grade specifications shall be at the discretion of the.~~ The inspector shall determine
13 whether the samples meet grade specifications after the department tests the
14 samples. If an inspector believes that a fuel product has been misidentified, an
15 inspection shall be performed. If the inspector finds that the petroleum fuel product
16 does not meet the minimum specifications prescribed by the department, the
17 inspector shall notify the person for whom the inspection was made. After such
18 notice, no person may sell or use the fuel product in this state or remove it from
19 storage as long as it fails to meet the minimum specifications prescribed by the
20 department or until satisfactory disposition is approved by the inspector. Any
21 transporter, wholesaler, or distributor of petroleum fuel products who delivers or
22 causes to be delivered a petroleum fuel product that fails to meet the minimum
23 specifications prescribed by the department shall, at the direction of the department,
24 remove the petroleum fuel product and dispose of it in a manner approved by the

1 department. The department may contract for the performance of testing conducted
2 under this subsection.

***NOTE: Is the change in this provision from "each sample" to "samples" intended to mean that the inspector need not inspect every sample taken? If not, I think that additional clarification is needed here.

3 **SECTION 24.** 168.07 (2) of the statutes is amended to read:

4 168.07 (2) Inspections under sub. (1) shall be conducted, so far as applicable,
5 in accordance with the methods outlined in the latest revision of the ASTM
6 International Annual Book of Standards of the American Society for Testing and
7 Materials.

8 **SECTION 25.** 168.08 (intro.) of the statutes is amended to read:

9 **168.08 Records.** (intro.) The department shall keep a record of each
10 inspection made, showing all of the following:

11 **SECTION 26.** 168.09 of the statutes is amended to read:

12 **168.09 Authority to enter.** Any inspector may enter in or upon the premises
13 of any manufacturer, distributor, vendor, dealer, or user of ~~gasoline, gasoline-alcohol~~
14 ~~fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates~~ fuel
15 products, during regular business hours to determine whether any petroleum fuel
16 product intended for sale or use has not been sampled and inspected in accordance
17 with this chapter.

18 **SECTION 27.** 168.10 of the statutes is amended to read:

19 **168.10 Access to records.** Every agent or employee of any railroad company
20 or other transportation company and every person transporting ~~gasoline,~~
21 ~~gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum~~
22 ~~distillates~~ fuel products, having the custody of books or records showing the
23 shipment or receipt of ~~gasoline, gasoline-alcohol fuel blends, kerosene, or other~~

1 ~~refined oils, fuel oils and petroleum distillates~~ fuel products, shall give and permit
2 ~~the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall~~
3 ~~give and permit the department of revenue; an inspector~~ free access to such books
4 and records for the purpose of determining the amount of ~~petroleum~~ fuel products
5 shipped and received. All clerks, bookkeepers, express agents, railroad agents, or
6 officials, employees, or common carriers, or other persons shall provide the
7 ~~department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall~~
8 ~~provide the department of revenue;~~ all information in their possession when so
9 requested in tracing, finding, sampling, and inspecting such shipments.

***NOTE: In this provision, as requested, I have replaced the list of fuels with the
term "fuel products" but I note that the list in current law is not the same as the list in
the definition for "fuel products" in this draft. Is this a problem?

SECTION 28. 168.11 (1) (a) of the statutes is amended to read:

168.11 (1) (a) Except as provided in par. (b), all devices used to draw ~~petroleum~~
fuel products from storage containers at ~~filling stations~~ motor fuel dispensing
facilities, garages, or other places where ~~petroleum~~ fuel products are sold or offered
for sale shall be marked or labeled in a conspicuous place and in a conspicuous
manner with the name ~~and the grades, grade, and octane~~ ^{rating if any} of the ~~petroleum~~ fuel
product being dispensed.

***NOTE: Should the term "octane rating" be used instead of just "octane"?

SECTION 29. 168.11 (1) (b) 3. of the statutes is amended to read:

168.11 (1) (b) 3. A label under this paragraph shall be on the front or side ~~both~~
each face of the upper half of the dispensing device and shall be conspicuous and legible
to a customer when viewed from the driver's seat of a motor vehicle that is located
within 6 feet of the dispensing device. The device may also be marked or labeled with
any product grade specifications prescribed under s. 168.04.

> ****NOTE: Is it clear what "both faces" means?

1 **SECTION 30.** 168.11 (2) (intro.) of the statutes is amended to read:

2 168.11 (2) (intro.) No person may deliver, place, receive, or store in any visible
3 portable container any gasoline; any fuel product of petroleum, regardless of name,
4 meeting the gasoline specifications prescribed by the department under s. 168.04; or
5 any fuel product of petroleum commonly or commercially used as a fuel in a
6 spark-ignition internal combustion engine or turbine engine or as a fuel for any
7 appliance or device if such the fuel product of petroleum has a flash point of less than
8 100° F. 100 degrees Fahrenheit when tested in the Tagliabue using either an ASTM
9 D 6450 or ASTM D 56 closed cup tester, unless the container is constructed of sound
10 metal or of equally sound nonflammable material meeting the requirements of the
11 ~~department's flammable and combustible liquids code~~ department is substantially a bright red
12 color; and has the common name of the product contents clearly labeled or painted
13 on it. These requirements do not apply to any of the following:

14 **SECTION 31.** 168.11 (2) (a) of the statutes is amended to read:

15 168.11 (2) (a) The fuel supply tank permanently connected to an internal
16 combustion engine; or turbine engine.

17 **SECTION 32.** 168.11 (2) (b) of the statutes is amended to read:

18 168.11 (2) (b) The fuel supply tank ~~which~~ that is structurally a part of any
19 appliance or device consuming the fuel;.

20 **SECTION 33.** 168.11 (2) (c) of the statutes is amended to read:

21 168.11 (2) (c) The first use of any container of one gallon or less originally filled
22 by a manufacturer or packager when the container complies with the packaging and
23 labeling requirements of the federal government and its agencies; ~~or~~.

24 **SECTION 34.** 168.11 (2) (d) of the statutes is amended to read:

rules promulgated by

1 168.11 (2) (d) ~~Containers~~ Stationary tanks of 275 ~~110~~ gallons capacity or more.
2 This ~~provision~~ paragraph does not exempt such ~~containers~~ tanks from the
3 identification requirements specified in rules promulgated by the department.

4 **SECTION 35.** 168.11 (3) of the statutes is amended to read:

5 168.11 (3) Except for containers referred to in sub. (2) (a), (b), and (c), no person
> 6 may deliver, place, receive, or store any ~~kerosene, diesel fuel, or burner oil, or a like~~
7 fuel product of petroleum which that has a flash point of 100° F. 100 degrees
8 Fahrenheit or more when tested ~~in the Tagliabue~~ using either an ASTM D 6450 or
9 ASTM D 56 closed cup tester, in any ~~visible~~ portable container ~~which that~~ is in any
10 manner colored red.

> *****NOTE:** What could be a "like fuel product"? The only fuel products not included
in the list are gasoline, gasoline-alcohol fuel blends and fuel oil. I question whether the
term "fuel oil" would be sufficient in this subsection.

11 **SECTION 36.** 168.11 (4) of the statutes is amended to read:

12 168.11 (4) No person may use interchangeably any pipeline, hose, pump, or
> 13 metering device to dispense ~~gasoline, or a like fuel~~ fuel product of petroleum which that
14 has a flash point of less than 100° F. 100 degrees Fahrenheit when tested ~~in the~~
15 ~~Tagliabue~~ using either an ASTM D 6450 or ASTM D 56 closed cup tester, and to
> 16 dispense ~~kerosene, diesel fuel or burner fuel oils, or a like fuel~~ product of petroleum
17 ~~which that~~ has a flash point of 100° F. 100 degrees Fahrenheit or more when tested
18 ~~in the Tagliabue~~ using either an ASTM D 6450 or ASTM D 56 closed cup tester, unless
19 the pipeline, hose, pump or metering device has been sufficiently flushed and cleaned
20 before the interchanged use to eliminate any contamination of products due to the
21 interchanged use.

> *****NOTE:** The use of the term "like fuel product" is confusing. See the NOTE to the
previous item.

22 **SECTION 37.** 168.12 (title) of the statutes is renumbered 77.9982 (title).

insert
13-22

✓

1 **SECTION 38.** 168.12 (1) of the statutes is renumbered 77.9982 (1) and amended
2 to read:

3 77.9982 (1) Except as provided in subs. ~~(1g)~~ (2) and ~~(1r)~~ (3), there is imposed
4 a ~~petroleum~~ fuel product inspection fee at the rate of 2 cents per gallon on all
5 ~~petroleum~~ fuel products that are received by a supplier for sale in this state or for sale
6 for export to this state. The department ~~of revenue~~ shall determine when a
7 ~~petroleum~~ fuel product is received under this subsection in the same manner that it
8 determines under s. 78.07 when motor vehicle fuel is received. The fee shall be paid
9 under s. ~~168.125~~ 77.9983 and shall be based on the number of gallons reported under
10 s. ~~168.125~~ 77.9983.

✓

11 **SECTION 39.** 168.12 (1g) of the statutes is renumbered 77.9982 (2) and amended
12 to read:

13 77.9982 (2) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products
14 that are shipped from storage at a refinery, marine terminal, pipeline terminal,
15 pipeline tank farm, or place of manufacture to a person for storage at another
16 refinery, marine terminal, pipeline terminal, pipeline tank farm, or place of
17 manufacture.

✓

18 **SECTION 40.** 168.12 (1r) of the statutes is renumbered 77.9982 (3) and amended
19 to read:

20 77.9982 (3) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products
21 exported from this state by a person who is licensed under sub. ~~(7)~~ (6) or s. 78.09.

✓

22 **SECTION 41.** 168.12 (5) of the statutes is renumbered 77.9982 (4) and amended
23 to read:

24 77.9982 (4) No fee may be charged on a commingled or blended ~~petroleum~~ fuel
25 product when such commingling or blending is approved by the ~~inspector~~

1 department of commerce as a satisfactory means of disposing of contaminated or
2 substandard products. ✓

3 **SECTION 42.** ✓ 168.12 (6) (a) of the statutes is renumbered 77.9982 (5) (a).

4 **SECTION 43.** ✓ 168.12 (6) (b) of the statutes is renumbered 77.9982 (5) (b) and
5 amended to read:

6 77.9982 (5) (b) To receive an allowance, an eligible purchaser under par. (a)
7 shall complete a claim upon a form that the department ~~of revenue~~ prescribes and
8 furnishes and file the claim with the department ~~of revenue~~ not later than 12 months
9 after the date of purchase of the general aviation fuel.

10 **SECTION 44.** ✓ 168.12 (6) (c) of the statutes is renumbered 77.9982 (5) (c) and
11 amended to read:

12 77.9982 (5) (c) The department ~~of revenue~~ shall investigate the correctness and
13 veracity of the representations in the claim and may require a claimant to submit
14 records to substantiate the claim. The department ~~of revenue~~ shall either allow or
15 deny a claim under this subsection not later than 60 days after the filing of the claim.
16 If the department ~~of revenue~~ allows the claim, it shall pay the claimant the amount
17 allowed from the moneys appropriated under s. 20.855 (4) (r). If the department ~~of~~
18 ~~revenue~~ does not pay the allowance by the 90th day after the date on which the
19 purchaser files the claim, the department ~~of revenue~~ shall also pay interest on the
20 unpaid claim beginning on that day, at the rate of 9% per year, from the moneys
21 appropriated under s. 20.855 (4) (r).

22 **SECTION 45.** ✓ 168.12 (6) (d) of the statutes is renumbered 77.9982 (5) (d) and
23 amended to read:

1 77.9982 (5) (d) If a purchaser negligently files a claim under this subsection
2 that is inaccurate in whole or in part, the department of revenue shall do one of the
3 following:

4 1. If the department of revenue has not paid the claim but has allowed a portion
5 of the claim, reduce the allowance by 25%.

6 2. If the department of revenue has paid the claim, require the purchaser to
7 refund to the department of revenue that portion of the amount paid under par. (c)
8 to which the purchaser is not entitled and impose a penalty on the purchaser equal
9 to 25% of the allowance, plus interest on the sum of the unpaid penalty and the
10 amount required to be refunded, accruing from the date that the penalty is imposed,
11 at the rate of 12% per year.

12 SECTION 46. 168.12 (6) (e) of the statutes is renumbered 77.9982 (5) (e) and
13 amended to read:

14 77.9982 (5) (e) If a purchaser files a fraudulent claim under this subsection, the
15 department of revenue shall do one of the following:

16 1. If the claim has not been paid and the department of revenue allows no
17 portion of the claim, impose a penalty on the purchaser equal to 50% of the amount
18 claimed by the purchaser, plus interest on the unpaid penalty, accruing from the date
19 that the penalty is imposed, at the rate of 12% per year.

20 2. If the claim has not been paid and the department of revenue allows a portion
21 of the claim, reduce the allowance by 50%.

22 3. If the claim has been paid, require the purchaser to refund to the department
23 of revenue that portion of the amount paid under par. (c) that the department of
24 revenue determines was fraudulently obtained and impose a penalty on the
25 purchaser equal to 50% of the amount claimed by the purchaser, plus interest on the

1 sum of the unpaid penalty and the amount required to be refunded, accruing from
2 the date that the penalty is imposed, at the rate of 12% per year.

3 **SECTION 47.** [✓] 168.12 (6) (f) of the statutes is renumbered 77.9982 (5) (f).

4 **SECTION 48.** [✓] 168.12 (6) (g) of the statutes is renumbered 77.9982 (5) (g).

5 **SECTION 49.** [✓] 168.12 (6) (h) of the statutes is renumbered 77.9982 (5) (h) and
6 amended to read:

7 77.9982 (5) (h) With respect to imposing a penalty and requiring a refund under
8 par. (d), the department of revenue shall give notice to the purchaser within 4 years
9 after the date that the claim was filed. The department of revenue may impose a
10 penalty and require a refund under par. (e) when the department of revenue
11 discovers the fraud committed.

12 **SECTION 50.** [✓] 168.12 (7) of the statutes is renumbered 77.9982 (6) and amended
13 to read:

14 77.9982 (6) No person may ship ~~petroleum~~ fuel products into this state unless
15 that person has a valid certificate under s. 73.03 (50) and either has a license under
16 s. 78.09 or obtains a ~~petroleum~~ fuel products shipper license from the department of
17 ~~revenue~~ by filing with ~~that~~ the department an application prescribed and furnished
18 by ~~that~~ the department and verified by the owner of the business if the owner is an
19 individual, by a member if the owner is an unincorporated association, by a partner
20 if the owner is a partnership, or by the president and secretary if the owner is a
21 corporation.

22 **SECTION 51.** [✓] 168.12 (8) (a) of the statutes is renumbered 77.9982 (7) (a) and
23 amended to read:

24 77.9982 (7) (a) To protect the revenues of this state, the department of revenue
25 may require any person who is liable to ~~that~~ the department for the fee under sub.

1 (1) to place with it security in the amount that ~~that~~ the department determines. The
2 department ~~of revenue~~ may increase or decrease the amount of the security, but that
3 amount may not exceed 3 times the person's average monthly liability for the fee
4 under sub. (1) as estimated by ~~that~~ the department. If any person fails to provide that
5 security, the department ~~of revenue~~ may refuse to issue a license under sub. ~~(7)~~ (6)
6 or s. 78.09 or may revoke the person's license under sub. ~~(7)~~ (6) or s. 78.09. If any
7 taxpayer is delinquent in the payment of the fee under sub. (1), the department ~~of~~
8 ~~revenue~~ may, upon 10 days' notice, recover the fee, interest, penalties, costs, and
9 disbursements from the person's security. The department ~~of revenue~~ may not pay
10 interest on any security deposit.

11 **SECTION 52.** 168.12 (8) (b) of the statutes is renumbered 77.9982 (7) (b) and
12 amended to read:

13 77.9982 (7) (b) The security required under par. (a) may be a surety bond
14 furnished to the department ~~of revenue~~ and payable to this state. The department
15 ~~of revenue~~ shall prescribe the form and contents of the bond.

16 **SECTION 53.** 168.12 (8) (c) of the statutes is renumbered 77.9982 (7) (c) and
17 amended to read:

18 77.9982 (7) (c) The surety of a bond under par. (b) may conditionally cancel the
19 bond by filing written notice with the person who is liable for the fee under sub. (1)
20 and with the department ~~of revenue~~. A surety who files that notice is not discharged
21 from any liability that has accrued or from any liability that accrues within 60 days
22 after the filing. If the person who is liable for the fee under sub. (1) does not, within
23 60 days after receiving the notice, file with the department ~~of revenue~~ a new bond
24 that is satisfactory to ~~that~~ the department, ~~that~~ the department shall revoke the
25 person's license under sub. ~~(7)~~ (6) or s. 78.09. If the person furnishes a new bond, the

1 department of revenue shall cancel and surrender the old bond when it is satisfied
2 that all liability under the old bond has been discharged.

3 **SECTION 54.** 168.12 (8) (d) of the statutes is renumbered 77.9982 (7) (d) and
4 amended to read:

5 77.9982 (7) (d) If the liability on the bond is discharged or reduced or if the
6 department of revenue determines that the bond is insufficient, that the department
7 shall require additional surety or new bonds. If any person who is liable for the fee
8 under sub. (1) fails to file that additional bond within 5 days after the department
9 of revenue provides written notice, that person's license under sub. (7) (6) or s. 78.09
10 is revoked.

11 **SECTION 55.** 168.12 (8) (e) of the statutes is renumbered 77.9982 (7) (e) and
12 amended to read:

13 77.9982 (7) (e) Suspension, revocation or cancellation of a license under sub.
14 (7) (6) or s. 78.09, partial recovery on the bond or execution of a new bond does not
15 affect the validity of a bond under this subsection.

16 **SECTION 56.** 168.12 (9) of the statutes is renumbered 77.9982 (8).

17 **SECTION 57.** 168.125 of the statutes is renumbered 77.9983 and amended to
18 read:

19 **77.9983 Reports; payment.** Persons who are liable for the fee under this
20 ~~chapter~~ subchapter shall state the number of gallons of petroleum fuel products on
21 which the fee is due and the amount of their liability for the fee in the reports under
22 s. 78.12 (1) to (3). The requirements for payment of the motor vehicle fuel tax under
23 s. 78.12 (5) apply to the fee under this ~~chapter~~ subchapter.

24 **SECTION 58.** 168.13 of the statutes is amended to read:

1 **168.13 Required records.** Every person receiving petroleum fuel products
2 in this state shall keep books and records of all petroleum fuel products so received,
3 together with bills of lading, waybills, and other pertinent documents. Such books
4 and records and other papers and documents shall, at all times during business
5 hours of the day, be subject to inspection by the department and its inspectors, and
6 are subject to inspection by the department of revenue in regard to the fee under s.
7 ~~168.12 (1)~~ an inspector. Such books, records and other papers and documents shall
8 be preserved for not less than 4 years, unless the department, and the department
9 of revenue under s. 77.9984, in writing, authorizes their destruction or disposal at
10 an earlier date.

11 ✓
SECTION 59. 168.14 (title) of the statutes is repealed and recreated to read:

12 **168.14 (title) Mislabeling.**

13 ✓
SECTION 60. 168.14 (2) of the statutes is amended to read:

14 168.14 (2) No person may receive, unload, use, sell, or offer for sale in this state,
15 any gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other
16 petroleum distillates which product that the person knows, or reasonably should
17 know, is misidentified as to name or grade. Gasoline-ethanol blends that are
18 identified in compliance with s. 168.11 when sold at retail are correctly identified as
19 to name. Biodiesel blends that are identified in compliance with sub. (2m) (c) 4. when
20 sold at retail are correctly identified as to name.

21 SECTION 61. 168.14 (2m) (b) 2. of the statutes is amended to read:

22 168.14 (2m) (b) 2. The fuel is pure biodiesel fuel, is identified as such with the
23 alphanumeric B100, and does not contain any petroleum fuel product, any additive,
24 or other foreign material.

****NOTE: Doesn't biodiesel fuel contain diesel fuel in that it is a kind of diesel fuel? If so, it would seem that this provision should not prohibit biodiesel fuel from containing a fuel product because fuel product is defined to include diesel fuel.

SECTION 62. 168.14 (2m) (b) 3. of the statutes is amended to read:

168.14 (2m) (b) 3. The fuel meets all of the applicable requirements of the American Society for Testing and Materials ASTM International.

****NOTE: Should this be redrafted to require the fuel to meet "ASTM International standards" instead of "applicable requirements"?

SECTION 63. 168.14 (2m) (c) (intro.) of the statutes is amended to read:

168.14 (2m) (c) (intro.) No person may represent, advertise, label, or otherwise promote for sale a fuel as being a blend of biodiesel and ~~petroleum-based~~ fuel products unless the fuel meets all of the following requirements:

****NOTE: Should the term "petroleum-based" be retained here for the reasons given in the NOTE to proposed s. 168.14 (2m) (b) 2., above?

SECTION 64. 168.14 (2m) (c) 1. of the statutes is amended to read:

168.14 (2m) (c) 1. The volume percentage of the biodiesel fuel to the ~~petroleum-based~~ fuel product is at least 2 percent.

SECTION 65. 168.14 (2m) (c) 2. of the statutes is amended to read:

168.14 (2m) (c) 2. The fuel is blended with petroleum-based diesel fuel.

****NOTE: I have not amended this provision as requested because it would seem that depending on the answer to the NOTE to proposed s. 168.14 (2m) (c) (intro.) above, the term "petroleum-based" should be retained.

SECTION 66. 168.14 (2m) (c) 3. of the statutes is amended to read:

168.14 (2m) (c) 3. The fuel meets all of the applicable requirements of the American Society for Testing and Materials ASTM International.

****NOTE: Should this refer to "ASTM International standards" instead of "requirements"?

SECTION 67. 168.15 of the statutes is amended to read:

168.15 Penalty. Every Any person who violates any provision of this chapter ~~that is not related to the fee under s. 168.12(1)~~ shall forfeit not less than \$10 nor more

1 than \$100 for each violation. Each day a person fails to comply with any provision
2 of this chapter is a separate violation.

***NOTE: The instructions for this item were unclear. Did you intend to increase
the forfeitures in this provision?

3 **SECTION 68.** 168.16 (2) of the statutes is amended to read:

4 168.16 (2) Any accident or explosion involving fuel products of ~~petroleum~~ which
5 comes to the knowledge of the department shall be investigated to determine
6 whether or not there has been a violation of this chapter.

7 **SECTION 69.** 168.16 (3) of the statutes is amended to read:

8 168.16 (3) The department may, upon request of state agencies or local
9 authorities, assist in the investigation of hazardous situations involving suspected
10 or known fuel products of ~~petroleum~~.

11 **SECTION 70.** 168.17 of the statutes is amended to read:

12 **168.17 Attorney general and district attorney to prosecute.** Upon
13 request of the department, the attorney general or proper district attorney shall
14 prosecute any action to enforce this chapter ~~except the fee that is imposed under s.~~
15 ~~168.12 (1).~~

16 **SECTION 71.** 227.01 (13) (zd) of the statutes is amended to read:

17 227.01 (13) (zd) Establishes procedures for oil fuel product inspection fee
18 collection under s. ~~168.12~~ 77.9982.

19 **SECTION 72.** 341.45 (1g) (a) of the statutes is amended to read:

20 341.45 (1g) (a) Except as provided in subs. (3) and (4g), every person who
21 purchases or obtains motor vehicle fuel or an alternate fuel outside of this state and
22 operates any qualified motor vehicle into this state upon a highway and transports
23 that fuel in an attached or unattached fuel supply tank for the sole purpose of

X
. RP; 168.18

1 operating the qualified motor vehicle shall pay the Wisconsin motor vehicle fuel or
2 alternate fuels tax and the oil fuel product inspection fee under s. ~~168.12~~ 77.9982 on
3 the gallons consumed by the qualified motor vehicle while operated on the highways
4 of this state. The person shall pay the tax and fee by purchasing motor vehicle fuel
5 or alternate fuels within this state in an amount that is equivalent to the gallonage
6 consumed while operating the qualified motor vehicle on the highways of this state,
7 or by remitting the tax and fee directly to the department or to another jurisdiction
8 that is a party to the international fuel tax agreement.

9 → (END)

D-note

insert
23-8

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0636/P2ins.
RNK:.....

INSERT ~~5-3~~ 4-5

X

1 **SECTION 1.** 101.02 (18m) of the statutes is amended to read:

2 101.02 **(18m)** The department may perform, or contract for the performance
3 of, testing of petroleum fuel products other than testing provided under ch. 168. The
4 department may establish a schedule of fees for such petroleum fuel product testing
5 services. The department shall credit all revenues received from fees established
6 under this subsection to the appropriation account under s. 20.143 (3) (ga). Revenues
7 from fees established under this subsection may be used by the department to pay
8 for testing costs, including laboratory supplies and equipment amortization, for such
9 products.

Insert 5-3

History: 1971 c. 185 ss. 1 to 5, 7; 1971 c. 228 ss. 16, 42; Stats. 1971 s. 101.02; 1973 c. 39, 94; 1977 c. 29; 1981 c. 360; 1983 a. 410; 1985 a. 182 s. 57; 1987 a. 343; 1989 a. 31, 56, 139; 1991 a. 39, 269; 1993 a. 27, 184, 258, 414, 492; 1995 a. 27 ss. 3631 to 3649r, 9126 (19); 1995 a. 215; 1997 a. 191, 237; 1999 a. 9; 2001 a. 61; 2005 a. 251, 456; 2007 a. 20 ss. 2609 to 2613, 9121 (6) (a); 2007 a. 203; s. 13.92 (2) (i).

→ 10 **SECTION 2.** 168.03 of the statutes is renumbered 168.01 (1g) and amended to
11 read:

statute
sections
are
out of
order.

12

168.01 **(1g)** Petroleum products defined. "Petroleum Fuel products"

13 means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, and
14 diesel fuel.

History: 1977 c. 29; 1979 c. 140; 2005 a. 83.

X

→ 15 **SECTION 3.** 168.02 of the statutes is renumbered 168.01 (1r) and amended to
16 read:

17

168.01 **(1r)** Inspector defined. "Inspector" "Inspector" means a duly
18 authorized petroleum fuel products inspector of the department.

19

INSERT 13-22

X

20 **SECTION 4.** 168.12 (title) of the statutes is renumbered 77.9982 (title) and
21 amended to read:

1 **77.9982 (title) Fees for oil fuel product inspection.**

History: 1971 c. 206; 1977 c. 29, 418; 1985 a. 313; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39, 269; 1993 a. 16, 416; 1995 a. 27; 1997 a. 27; 2005 a. 25.

INSERT 23-8

2 ~~X~~
SECTION 5. 341.45 (2) of the statutes is amended to read:

3 341.45 (2) Every person regularly or habitually operating qualified motor
4 vehicles upon the highways of any other state and using in those qualified motor
5 vehicles motor vehicle fuel or an alternate fuel purchased or obtained in this state
6 shall be allowed a credit or refund equal to the ~~oil~~ fuel product inspection fee and the
7 tax on the motor vehicle fuel or alternate fuel actually paid to the state in which it
8 is used, but not to exceed the tax and fee imposed on motor vehicle fuel or alternate
9 fuels by this state.

~~X~~
History: 1981 c. 347; 1983 a. 27; 1987 a. 27 ~~ss.~~ 1610m to 1612m, 1986bk to 1986bp; Stats. 1987 s. 341.45; 1987 a. 369; 1989 a. 31; 1993 a. 16; 1995 a. 113.

10 **SECTION 6.** 341.45 (4m) of the statutes is amended to read:

11 341.45 (4m) All ~~oil~~ fuel product inspection fees paid to the department of
12 transportation under sub. (1g) (a) in excess of ~~oil~~ fuel product inspection fee credits
13 or refunds under sub. (2) shall be deposited in the petroleum inspection fund. All ~~oil~~
14 fuel product inspection fees credited or refunded by the department of transportation
15 under sub. (2) in excess of ~~oil~~ fuel product inspection fees paid to the department of
16 transportation under sub. (1g) (a) shall be paid from the petroleum inspection fund.

~~X~~
History: 1981 c. 347; 1983 a. 27; 1987 a. 27 ~~ss.~~ 1610m to 1612m, 1986bk to 1986bp; Stats. 1987 s. 341.45; 1987 a. 369; 1989 a. 31; 1993 a. 16; 1995 a. 113.

17 **SECTION 7.** 341.45 (5) of the statutes is amended to read:

18 341.45 (5) The department shall promulgate rules under ch. 227 necessary to
19 administer this section. The rules shall include provisions relating to the issuance
20 and use of the permits authorized under sub. (4g). The rules may include provisions
21 relating to the payment of interest on late payments of motor vehicle fuel and

1 alternate fuels taxes and ~~oil~~ fuel product inspection fees, and fees for the late
2 payment or underpayment of motor vehicle fuel and alternate fuels taxes and ~~oil~~ fuel
3 product inspection fees.

History: 1981 c. 347; 1983 a. 27; 1987 a. 27 ss. 1610m to 1612m, 1986bk to 1986bp; Stats. 1987 s. 341.45; 1987 a. 369; 1989 a. 31; 1993 a. 16; 1995 a. 113.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0636/P2dn

RNK:.....

Lbjk

Date

This redraft incorporates the changes requested by Sam Rockweiler of the Department of Commerce. Please note the following:

1. I question whether the amended language in s. 168.07 (1) makes the Department of Commerce's responsibilities for sample inspection clear. The language gives no guidance on which samples the department must inspect. Given the fact that the department cannot inspect every sample, the department may want to consider amending the language of this provision to give the department authority to inspect samples but not require it. Or perhaps the language should require the department to inspect random samples. At any rate, I think this provision requires clarification.

> 2. One of the redraft instructions was to change the term "flammable and combustible liquids code" to "applicable code" in s. 168.11 (2) (intro.). Instead, I have redrafted this language to refer to "rules promulgated by the department". This language is consistent with current drafting style.

3. As instructed by Don Dyke, I did not make the requested penalty changes given that those changes may be beyond the scope of a law revision proposal.

> 4. This version of the draft amends several additional provisions of current law in order to change the term "oil inspection" to "fuel product inspection".

Feel free to contact me if you have any questions.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

I also repeals 50/168.018 because that section is no longer relevant.

Kite, Robin

From: Dyke, Don
Sent: Wednesday, January 21, 2009 10:12 AM
To: Kite, Robin
Subject: RE: LRB 09-0636/P2 -- Revision of Chapter 168

Robin,
Please proceed to incorporate the changes.
Thanks for asking.
Don

From: Kite, Robin
Sent: Wednesday, January 21, 2009 9:52 AM
To: Dyke, Don
Subject: FW: LRB 09-0636/P2 -- Revision of Chapter 168

Don:

Sam Rockweiler from Commerce talked to me about these changes last week. They are all minor, technical changes to the draft. Should I go ahead and redraft to incorporate these changes?

Robin

From: Rockweiler, Sam - COMMERCE [mailto:Sam.Rockweiler@Wisconsin.gov]
Sent: Wednesday, January 21, 2009 9:41 AM
To: Kite, Robin
Cc: Cornelius, Louie - COMMERCE; Fehrenbach, Mike R - COMMERCE; Gahan-Hunter, Tarna - COMMERCE; Mattsson, Berni - COMMERCE; Schall, Sheldon - COMMERCE
Subject: LRB 09-0636/P2 -- Revision of Chapter 168

As we discussed last week, please make the following changes to the redraft dated January 13, 2009:

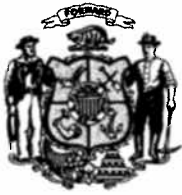
On page 5, in lines 6 through 12, if (1r) and (1g) cannot be changed to (2) and (3), respectively, then change them to (3) and (4), respectively. Then update the corresponding cross-reference on page 3, line 5, and page 4, line 2.

On page 8, change lines 4 and 5 to read "This section does not apply to fuel products that are used in this state but are not sold or offered for sale in this state."

On page 9, line 15, change "shall" to "may."

On page 11, change line 20 to ultimately read "manner with the name and grade, and octane rating if any, of the"

On page 20, line 10, make "authorizes" plural.



(soon)
State of Wisconsin
2009 - 2010 LEGISLATURE

RM run
P3
LRB-0636/P2

RNK:bjk:ph

L. Stapp

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
1/21

SAV

1 **AN ACT** *to repeal* 168.18; *to renumber* 168.12 (6) (a), 168.12 (6) (f), 168.12 (6)
2 (g) and 168.12 (9); *to renumber and amend* 168.01 (2), 168.02, 168.03, 168.12
3 (title), 168.12 (1), 168.12 (1g), 168.12 (1r), 168.12 (5), 168.12 (6) (b), 168.12 (6)
4 (c), 168.12 (6) (d), 168.12 (6) (e), 168.12 (6) (h), 168.12 (7), 168.12 (8) (a), 168.12
5 (8) (b), 168.12 (8) (c), 168.12 (8) (d), 168.12 (8) (e) and 168.125; *to amend* 20.566
6 (1) (s), 20.855 (4) (r), 25.47 (1), 98.246 (title), (1) and (2), 101.02 (18m), 168.04
7 (3), 168.05 (title), 168.05 (1), 168.05 (2), 168.05 (3), 168.05 (4), 168.05 (5), 168.06
8 (1), 168.06 (2), 168.06 (3), 168.07 (1), 168.07 (2), 168.08 (intro.), 168.09, 168.10,
9 168.11 (1) (a), 168.11 (1) (b) 3., 168.11 (2) (intro.), 168.11 (2) (a), 168.11 (2) (b),
10 168.11 (2) (c), 168.11 (2) (d), 168.11 (3), 168.11 (4), 168.13, 168.14 (2), 168.14
11 (2m) (b) 3., 168.14 (2m) (c) 3., 168.16 (2), 168.16 (3), 168.17, 227.01 (13) (zd),
12 341.45 (1g) (a), 341.45 (2), 341.45 (4m) and 341.45 (5); *to repeal and recreate*
13 168.14 (title); and *to create* subchapter XIV of chapter 77 (precedes 77.9981),
14 77.9981, 77.9984, 77.9985 and 168.05 (6) of the statutes; **relating to:** fuel

1 products fees and inspection (suggested as remedial legislation by the
2 Department of Commerce).

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information, see the NOTES provided by the Law Revision
Committee of the Joint Legislative Council.

***The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:***

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation
proposal, requested by the Department of Commerce and introduced by the Law Revision
Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various
provisions of the bill, the Law Revision Committee has determined that this bill makes
minor substantive changes in the statutes, and that these changes are desirable as a
matter of public policy.

3 **SECTION 1.** 20.566 (1) (s) of the statutes is amended to read:

4 20.566 (1) (s) ~~Petroleum~~ Fuel product inspection fee collection. From the
5 petroleum inspection fund, the amounts in the schedule to cover the cost of collecting
6 the ~~petroleum~~ fuel product inspection fee that is authorized under s. ~~168.12~~ 77.9982
7 (1).

8 **SECTION 2.** 20.855 (4) (r) of the statutes is amended to read:

9 20.855 (4) (r) *Petroleum allowance*. From the petroleum inspection fund, a sum
10 sufficient for the payment of allowances and interest under s. ~~168.12 (6)~~ 77.9982 (5).

11 **SECTION 3.** 25.47 (1) of the statutes is amended to read:

12 25.47 (1) The fees imposed under s. ~~168.12~~ 77.9982 (1).

13 **SECTION 4.** Subchapter XIV of chapter 77 (precedes 77.9981) of the statutes is
14 created to read:

CHAPTER 77

SUBCHAPTER XIV

FUEL PRODUCTS INSPECTION FEES

SECTION 5. 77.9981 of the statutes is created to read:

77.9981 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "Fuel products" has the meaning given in s. 168.01 (1g).

SECTION 6. 77.9984 of the statutes is created to read:

77.9984 Required records. Every person receiving fuel products in this state shall keep books and records of all fuel products so received, together with bills of lading, waybills, and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the department in regard to the fee under s. 77.9982 (1). Such books, records, and other papers and documents shall be preserved for not less than 4 years, unless the department, and the department of commerce under s. 168.13, in writing, authorize their destruction or disposal at an earlier date.

SECTION 7. 77.9985 of the statutes is created to read:

77.9985 Access to records. Every agent or employee of any railroad company or other transportation company and every person transporting fuel products having the custody of books or records showing the shipment or receipt of fuel products shall give and permit the department free access to such books and records for the purpose of determining the amount of fuel products shipped and received. All clerks, bookkeepers, express agents, railroad agents, or officials, employees, or common carriers, or other persons shall provide all information in their possession when so requested in tracing and finding such shipments.

SECTION 8. 98.246 (title), (1) and (2) of the statutes are amended to read:

1 **98.246** (title) **Petroleum Fuel product sales.** (1) In this section, “petroleum
2 fuel products” has the meaning given under s. ~~168.03~~ 168.01 (1g) (3)

3 (2) ~~Petroleum Fuel~~ products may not be sold from a terminal or storage facility
4 in this state on any basis other than gross volume without correction for
5 temperature.

6 SECTION 9. 101.02 (18m) of the statutes is amended to read:

7 101.02 (18m) The department may perform, or contract for the performance
8 of, testing of ~~petroleum~~ fuel products other than testing provided under ch. 168. The
9 department may establish a schedule of fees for such ~~petroleum~~ fuel product testing
10 services. The department shall credit all revenues received from fees established
11 under this subsection to the appropriation account under s. 20.143 (3) (ga). Revenues
12 from fees established under this subsection may be used by the department to pay
13 for testing costs, including laboratory supplies and equipment amortization, for such
14 products.

15 SECTION 10. 168.01 (2) of the statutes is renumbered 77.9981 (3) and amended
16 to read:

17 77.9981 (3) “Supplier” includes a person who imports, or acquires immediately
18 upon import, ~~petroleum~~ fuel products by pipeline or marine vessel from a state,
19 territory, or possession of the United States or from a foreign country into a terminal
20 and who is registered under 26 USC 4101 for tax-free transactions in gasoline.
21 “Supplier” also includes a person who produces in this state; or imports into a
22 terminal or bulk plant; or acquires immediately upon import by truck, railcar, or
23 barge into a terminal; alcohol or alcohol derivative products. “Supplier” also includes
24 a person who produces, manufactures or refines ~~petroleum~~ fuel products in this
25 state. “Supplier” also includes a person who acquires ~~petroleum~~ fuel products

pursuant to an industry terminal exchange agreement or by a 2-party exchange under section 4105 of the Internal Revenue Code. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product and does not include a terminal operator who merely handles in a terminal petroleum fuel products consigned to the terminal operator.

SECTION 11. 168.02 of the statutes is renumbered 168.01 ⁽⁴⁾ and amended to read:

168.01 ⁽⁴⁾ ~~(1r)~~ ~~INSPECTOR DEFINED.~~ "Inspector" means a duly authorized petroleum fuel products inspector of the department.

SECTION 12. 168.03 of the statutes is renumbered 168.01 ⁽³⁾ ~~(1g)~~ and amended to read:

168.01 ⁽³⁾ ~~(1g)~~ ~~PETROLEUM PRODUCTS DEFINED.~~ "Petroleum Fuel products" means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, and diesel fuel.

SECTION 13. 168.04 ⁽³⁾ of the statutes is amended to read:

168.04 ⁽³⁾ Except as otherwise provided in this section, rules promulgated under this section shall be in conformity with nationally recognized standards, specifications, and classifications, such as those published by ~~the American Society for Testing and Materials~~ ASTM International, the Society of Automotive Engineers, and the U.S. Environmental Protection Agency. The department may not promulgate or enforce a rule prohibiting the placement of additional product information on the dispensing device.

SECTION 14. 168.05 ⁽³⁾ (title) of the statutes is amended to read:

168.05 (title) **Inspection of petroleum fuel products.**

SECTION 15. 168.05 ⁽³⁾ (1) of the statutes is amended to read:

1 168.05 (1) No ~~petroleum~~ fuel product imported into and received in this state
2 or received from a manufacturer or refiner or from a marine or pipeline terminal
3 within this state may be unloaded from its original container except as provided
4 under sub. (5), sold, offered for sale, or used until a true sample of not less than 8
5 ounces is taken as provided in this chapter. This subsection does not apply if the
6 department has previously inspected the ~~petroleum~~ fuel product at the refinery,
7 marine or pipeline terminal. Each person importing or receiving a ~~petroleum~~ fuel
8 product ~~which~~ that has not been previously inspected shall notify the inspector in the
9 person's district of the receipt thereof, ~~and the inspector shall take a sample of the~~
10 ~~petroleum product.~~

11 **SECTION 16.** 168.05 (2) of the statutes is amended to read:

12 168.05 (2) If such ~~petroleum~~ fuel product is received on a regular business day
13 between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given ~~forthwith~~
14 upon receipt of such ~~petroleum~~ fuel product. If received at any other time, such notice
15 shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular
16 business day. ~~Provided, except~~ that, if any ~~petroleum~~ fuel product is received on
17 Saturday, Sunday, or any legal holiday, designated in s. 995.20, such notice shall be
18 given on the next following regular business day between the hours of 7:45 a.m. and
19 10 a.m.

20 **SECTION 17.** 168.05 (3) of the statutes is amended to read:

21 168.05 (3) If the inspector does not, upon proper notice, after a reasonable
22 length of time, take such sample, the recipient of such ~~petroleum~~ fuel product may,
23 in the presence of a disinterested witness, open ~~such~~ the original container and take
24 a true sample of not less than 8 ounces of the contents ~~thereof~~ of the original
25 container. ~~Such~~ The sample shall be immediately placed in a clean container ~~which~~

1 ~~that~~ is in compliance with s. 168.11 (2) and (3) and tightly closed. The recipient shall
2 record upon a label attached to such ~~the~~ container the means of conveyance, the type
3 of original container, the product name and quantity of the contents ~~thereof of the~~
4 ~~container~~, and such other information as the department reasonably requires for the
5 proper identification of such ~~the~~ shipment. ~~Such~~ The sample thus taken shall be held
6 for delivery, upon demand, to the inspector. After such ~~the~~ sample is taken such
7 ~~petroleum the fuel~~ product may be unloaded, sold, offered for sale, or used the same
8 as if sampled by the inspector. The inspector or the recipient may discard the sample
9 7 or more business days after the day on which the sample was taken.

10 **SECTION 18.** 168.05 (4) of the statutes is amended to read:

11 168.05 (4) For the purpose of this section, the ~~following~~ department shall
12 ~~constitute~~ determine what constitutes a reasonable length of time in which an
13 inspector ~~shall~~ may take the ~~a~~ sample herein required: If notice is properly given to
14 an inspector before the hour of 11:45 a.m., the inspector shall take such sample before
15 the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45
16 a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the
17 next following regular business day. ~~Saturdays, Sundays, and legal holidays,~~
18 ~~designated in s. 995.20, shall not be considered regular business days.~~

19 **SECTION 19.** 168.05 (5) of the statutes is amended to read:

20 168.05 (5) The department may permit a recipient to unload such ~~petroleum~~
21 ~~the fuel~~ product prior to inspection if the recipient ~~submits an application setting~~
22 ~~forth good and sufficient reasons, and~~ complies with requirements of sub. (3). ~~The~~
23 ~~recipient~~ may unload ships or boats without inspection if an emergency is declared
24 by the U.S. coast guard. A recipient must notify the department as required by sub.

(2) and the department shall revoke permission granted under this subsection if the recipient violates sub. (2).

SECTION 20. 168.05 (6) of the statutes is created to read:

168.05 (6) This section does not apply to fuel products that are sold or offered for sale ~~outside of~~ ⁱⁿ this state.

*used in this state
but that are not*

SECTION 21. 168.06 (1) of the statutes is amended to read:

168.06 (1) For the purposes of administering this chapter, inspectors may take samples of ~~gasoline gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates~~ products for tests and make inspections at any points within or without this state, and may open any original container containing ~~gasoline, gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates~~ products and take a true sample of not less than 8 ounces of the contents thereof, even though the original containers may still be in the possession of a common or contract carrier, provided the opening and sampling does not unduly inconvenience or hamper the transportation of the fuel products. After the original containers are opened and sampled ~~the same, the inspector shall be resealed~~ resealed ~~the containers~~ with seals furnished by the department for such purposes. The authority conferred by this section shall be in addition to, and not in limitation of, any of the provisions of s. 168.05.

SECTION 22. 168.06 (2) of the statutes is amended to read:

168.06 (2) If any ~~petroleum~~ fuel product is emptied or transferred into any container ~~in which is contained~~ containing any other grade of ~~petroleum~~ fuel product, then the entire commingling shall be ~~deemed~~ considered uninspected and a sample of such ~~the commingled petroleum product~~ fuel products shall be taken before such

1 ~~the commingled petroleum product is~~ fuel products are removed from such ~~the~~
2 container, sold, offered for sale, or used.

3 **SECTION 23.** 168.06 (3) of the statutes is amended to read:

4 168.06 (3) Notice of such ~~the~~ commingling of any ~~petroleum~~ fuel products shall
5 be given in the same manner and subject to the same conditions as notice of the
6 receipts of ~~petroleum~~ fuel products as provided in s. 168.05. The sample of such ~~the~~
7 commingled ~~petroleum~~ fuel products shall be taken by the inspector within a
8 reasonable length of time, as ~~defined and set forth~~ provided in s. 168.05, after notice.
9 If such ~~the~~ inspector does not take such ~~the~~ sample within such ~~that~~ time, the
10 commingler shall take a true sample of not less than 8 ounces of the commingled
11 ~~petroleum~~ fuel products. The taking, sealing, and holding of such ~~the~~ sample by the
12 commingler shall, so far as applicable, be governed by the provisions of s. 168.05
13 relating to ~~the same~~ by a person receiving a ~~petroleum~~ fuel product.

14 **SECTION 24.** 168.07 (1) of the statutes is amended to read:

15 168.07 (1) The inspector ~~shall~~ ^{may} inspect each ~~sample~~ samples of petroleum
16 ~~product and if the inspector finds that it meets~~ fuel products to determine whether
17 the samples meet the minimum specifications prescribed by the department, ~~the~~
18 ~~inspector shall issue an inspection certificate, except that inspections for particular~~
19 ~~grade specifications shall be at the discretion of the.~~ The inspector shall determine
20 whether the samples meet grade specifications after the department tests the
21 samples. If an inspector believes that a fuel product has been misidentified, an
22 inspection shall be performed. If the inspector finds that the ~~petroleum~~ fuel product
23 does not meet the minimum specifications prescribed by the department, the
24 inspector shall notify the person for whom the inspection was made. After such
25 notice, no person may sell or use the fuel product in this state or remove it from

1 storage as long as it fails to meet the minimum specifications prescribed by the
2 department or until satisfactory disposition is approved by the inspector. Any
3 transporter, wholesaler, or distributor of petroleum fuel products who delivers or
4 causes to be delivered a petroleum fuel product that fails to meet the minimum
5 specifications prescribed by the department shall, at the direction of the department,
6 remove the petroleum fuel product and dispose of it in a manner approved by the
7 department. The department may contract for the performance of testing conducted
8 under this subsection.

9 **SECTION 25.** 168.07 (2) of the statutes is amended to read:

10 168.07 (2) Inspections under sub. (1) shall be conducted, so far as applicable,
11 in accordance with the methods outlined in the ~~latest revision of the~~ ASTM
12 International Annual Book of Standards of the ~~American Society for Testing and~~
13 Materials.

14 **SECTION 26.** 168.08 (intro.) of the statutes is amended to read:

15 **168.08 Records.** (intro.) The department shall keep a record of each
16 inspection made, showing all of the following:

17 **SECTION 27.** 168.09 of the statutes is amended to read:

18 **168.09 Authority to enter.** Any inspector may enter in or upon the premises
19 of any manufacturer, distributor, vendor, dealer, or user of ~~gasoline, gasoline-alcohol~~
20 ~~fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates~~ fuel
21 products, during regular business hours to determine whether any petroleum fuel
22 product intended for sale or use has not been sampled and inspected in accordance
23 with this chapter.

24 **SECTION 28.** 168.10 of the statutes is amended to read:

1 **168.10 Access to records.** Every agent or employee of any railroad company
2 or other transportation company and every person transporting gasoline,
3 gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum
4 distillates fuel products, having the custody of books or records showing the
5 shipment or receipt of gasoline, gasoline-alcohol fuel blends, kerosene, or other
6 refined oils, fuel oils and petroleum distillates fuel products, shall give and permit
7 the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall
8 give and permit the department of revenue; an inspector free access to such books
9 and records for the purpose of determining the amount of petroleum fuel products
10 shipped and received. All clerks, bookkeepers, express agents, railroad agents, or
11 officials, employees, or common carriers, or other persons shall provide the
12 department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall
13 provide the department of revenue; all information in their possession when so
14 requested in tracing, finding, sampling, and inspecting such shipments.

15 **SECTION 29.** 168.11 (1) (a) of the statutes is amended to read:

16 168.11 (1) (a) Except as provided in par. (b), all devices used to draw petroleum
17 fuel products from storage containers at ~~filling stations~~ motor fuel dispensing
18 facilities, garages, or other places where petroleum fuel products are sold or offered
19 for sale shall be marked or labeled in a conspicuous place and in a conspicuous
20 manner with the name ^{set plain} ~~and the grades~~ grade, and octane ratings if any, of the
21 petroleum fuel product being dispensed.

22 **SECTION 30.** 168.11 (1) (b) 3. of the statutes is amended to read:

23 168.11 (1) (b) 3. A label under this paragraph shall be on ~~the front or side~~ each
24 face of the upper half of the dispensing device and shall be conspicuous and legible
25 to a customer when viewed from the driver's seat of a motor vehicle that is located

1 within 6 feet of the dispensing device. The device may also be marked or labeled with
2 any product grade specifications prescribed under s. 168.04.

3 **SECTION 31.** 168.11 (2) (intro.) of the statutes is amended to read:

4 168.11 (2) (intro.) No person may deliver, place, receive, or store in any ~~visible~~
5 portable container any ~~gasoline; any fuel~~ product of ~~petroleum~~, regardless of name,
6 meeting the gasoline specifications prescribed by the department under s. 168.04; or
7 any fuel product of ~~petroleum~~ commonly or commercially used as a fuel in a
8 spark-ignition internal combustion engine or turbine engine or as a fuel for any
9 appliance or device if ~~such~~ the fuel product of ~~petroleum~~ has a flash point of less than
10 100° F. 100 degrees Fahrenheit when tested ~~in the Tagliabue~~ using either an ASTM
11 D 6450 or ASTM D 56 closed cup tester, unless the container is constructed of sound
12 metal or of equally sound nonflammable material meeting the requirements of rules
13 promulgated by the department's flammable and combustible liquids code
14 department; is substantially a bright red color; and has the common name of the
15 ~~product contents~~ clearly labeled or painted on it. These requirements do not apply
16 to any of the following:

17 **SECTION 32.** 168.11 (2) (a) of the statutes is amended to read:

18 168.11 (2) (a) The fuel supply tank permanently connected to an internal
19 combustion engine; or turbine engine.

20 **SECTION 33.** 168.11 (2) (b) of the statutes is amended to read:

21 168.11 (2) (b) The fuel supply tank ~~which~~ that is structurally a part of any
22 appliance or device consuming the fuel;

23 **SECTION 34.** 168.11 (2) (c) of the statutes is amended to read:

1 168.11 (2) (c) The first use of any container of one gallon or less originally filled
2 by a manufacturer or packager when the container complies with the packaging and
3 labeling requirements of the federal government and its agencies; or,

4 **SECTION 35.** [✓]168.11 (2) (d) of the statutes is amended to read:

5 168.11 (2) (d) ~~Containers~~ Stationary tanks of ~~275~~ 110 gallons capacity or more.
6 This ~~provision~~ paragraph does not exempt such ~~containers~~ tanks from the
7 identification requirements specified in rules promulgated by the department.

8 **SECTION 36.** [✓]168.11 (3) of the statutes is amended to read:

9 168.11 (3) Except for containers referred to in sub. (2) (a), (b), and (c), no person
10 may deliver, place, receive, or store any ~~kerosene, diesel fuel or burner oil, or a like~~
11 fuel product of ~~petroleum which~~ that has a flash point of ~~100° F. 100 degrees~~
12 Fahrenheit or more when tested in the Tagliabue using either an ASTM D 6450 or
13 ASTM D 56 closed cup tester, in any ~~visible portable~~ container ~~which~~ that is in any
14 manner colored red.

15 **SECTION 37.** [✓]168.11 (4) of the statutes is amended to read:

16 168.11 (4) No person may use interchangeably any pipeline, hose, pump, or
17 metering device to dispense ~~gasoline, or a like fuel~~ product of ~~petroleum which~~ that
18 has a flash point of less than ~~100° F. 100 degrees Fahrenheit~~ when tested in the
19 Tagliabue using either an ASTM D 6450 or ASTM D 56 closed cup tester, and to
20 dispense ~~kerosene, diesel fuel or burner fuel oils, or a like fuel~~ product of ~~petroleum~~
21 ~~which~~ that has a flash point of ~~100° F. 100 degrees Fahrenheit~~ or more when tested
22 in the Tagliabue using either an ASTM D 6450 or ASTM D 56 closed cup tester, unless
23 the pipeline, hose, pump or metering device has been sufficiently flushed and cleaned
24 before the interchanged use to eliminate any contamination of products due to the
25 interchanged use.

1 **SECTION 38.** 168.12 (title) of the statutes is renumbered 77.9982 (title) and
2 amended to read:

3 **77.9982 (title) Fees for oil fuel product inspection.**

4 **SECTION 39.** 168.12 (1) of the statutes is renumbered 77.9982 (1) and amended
5 to read:

6 77.9982 (1) Except as provided in subs. (1g) (2) and (1r) (3), there is imposed
7 a ~~petroleum~~ fuel product inspection fee at the rate of 2 cents per gallon on all
8 ~~petroleum~~ fuel products that are received by a supplier for sale in this state or for sale
9 for export to this state. The department of ~~revenue~~ shall determine when a
10 ~~petroleum~~ fuel product is received under this subsection in the same manner that it
11 determines under s. 78.07 when motor vehicle fuel is received. The fee shall be paid
12 under s. ~~168.125~~ 77.9983 and shall be based on the number of gallons reported under
13 s. ~~168.125~~ 77.9983.

14 **SECTION 40.** 168.12 (1g) of the statutes is renumbered 77.9982 (2) and amended
15 to read:

16 77.9982 (2) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products
17 that are shipped from storage at a refinery, marine terminal, pipeline terminal,
18 pipeline tank farm, or place of manufacture to a person for storage at another
19 refinery, marine terminal, pipeline terminal, pipeline tank farm, or place of
20 manufacture.

21 **SECTION 41.** 168.12 (1r) of the statutes is renumbered 77.9982 (3) and amended
22 to read:

23 77.9982 (3) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products
24 exported from this state by a person who is licensed under sub. (7) (6) or s. 78.09.

1 **SECTION 42.** 168.12 (5) of the statutes is renumbered 77.9982 (4) and amended
2 to read:

3 77.9982 (4) No fee may be charged on a commingled or blended petroleum fuel
4 product when such commingling or blending is approved by the ~~inspector~~
5 department of commerce as a satisfactory means of disposing of contaminated or
6 substandard products.

7 **SECTION 43.** 168.12 (6) (a) of the statutes is renumbered 77.9982 (5) (a).

8 **SECTION 44.** 168.12 (6) (b) of the statutes is renumbered 77.9982 (5) (b) and
9 amended to read:

10 77.9982 (5) (b) To receive an allowance, an eligible purchaser under par. (a)
11 shall complete a claim upon a form that the department of ~~revenue~~ prescribes and
12 furnishes and file the claim with the department of ~~revenue~~ not later than 12 months
13 after the date of purchase of the general aviation fuel.

14 **SECTION 45.** 168.12 (6) (c) of the statutes is renumbered 77.9982 (5) (c) and
15 amended to read:

16 77.9982 (5) (c) The department of ~~revenue~~ shall investigate the correctness and
17 veracity of the representations in the claim and may require a claimant to submit
18 records to substantiate the claim. The department of ~~revenue~~ shall either allow or
19 deny a claim under this subsection not later than 60 days after the filing of the claim.
20 If the department of ~~revenue~~ allows the claim, it shall pay the claimant the amount
21 allowed from the moneys appropriated under s. 20.855 (4) (r). If the department of ~~of~~
22 ~~revenue~~ does not pay the allowance by the 90th day after the date on which the
23 purchaser files the claim, the department of ~~revenue~~ shall also pay interest on the
24 unpaid claim beginning on that day, at the rate of 9% per year, from the moneys
25 appropriated under s. 20.855 (4) (r).

✓
1 **SECTION 46.** 168.12 (6) (d) of the statutes is renumbered 77.9982 (5) (d) and
2 amended to read:

3 77.9982 (5) (d) If a purchaser negligently files a claim under this subsection
4 that is inaccurate in whole or in part, the department of revenue shall do one of the
5 following:

6 1. If the department ~~of revenue~~ has not paid the claim but has allowed a portion
7 of the claim, reduce the allowance by 25%.

8 2. If the department ~~of revenue~~ has paid the claim, require the purchaser to
9 refund to the department ~~of revenue~~ that portion of the amount paid under par. (c)
10 to which the purchaser is not entitled and impose a penalty on the purchaser equal
11 to 25% of the allowance, plus interest on the sum of the unpaid penalty and the
12 amount required to be refunded, accruing from the date that the penalty is imposed,
13 at the rate of 12% per year.

✓
14 **SECTION 47.** 168.12 (6) (e) of the statutes is renumbered 77.9982 (5) (e) and
15 amended to read:

16 77.9982 (5) (e) If a purchaser files a fraudulent claim under this subsection, the
17 department ~~of revenue~~ shall do one of the following:

18 1. If the claim has not been paid and the department ~~of revenue~~ allows no
19 portion of the claim, impose a penalty on the purchaser equal to 50% of the amount
20 claimed by the purchaser, plus interest on the unpaid penalty, accruing from the date
21 that the penalty is imposed, at the rate of 12% per year.

22 2. If the claim has not been paid and the department ~~of revenue~~ allows a portion
23 of the claim, reduce the allowance by 50%.

24 3. If the claim has been paid, require the purchaser to refund to the department
25 ~~of revenue~~ that portion of the amount paid under par. (c) that the department ~~of~~

1 ~~revenue~~ determines was fraudulently obtained and impose a penalty on the
2 purchaser equal to 50% of the amount claimed by the purchaser, plus interest on the
3 sum of the unpaid penalty and the amount required to be refunded, accruing from
4 the date that the penalty is imposed, at the rate of 12% per year.

5 **SECTION 48.** 168.12 (6) (f) of the statutes is renumbered 77.9982 (5) (f).

6 **SECTION 49.** 168.12 (6) (g) of the statutes is renumbered 77.9982 (5) (g).

7 **SECTION 50.** 168.12 (6) (h) of the statutes is renumbered 77.9982 (5) (h) and
8 amended to read:

9 77.9982 (5) (h) With respect to imposing a penalty and requiring a refund under
10 par. (d), the department of ~~revenue~~ shall give notice to the purchaser within 4 years
11 after the date that the claim was filed. The department of ~~revenue~~ may impose a
12 penalty and require a refund under par. (e) when the department of ~~revenue~~
13 discovers the fraud committed.

14 **SECTION 51.** 168.12 (7) of the statutes is renumbered 77.9982 (6) and amended
15 to read:

16 77.9982 (6) No person may ship ~~petroleum~~ fuel products into this state unless
17 that person has a valid certificate under s. 73.03 (50) and either has a license under
18 s. 78.09 or obtains a ~~petroleum~~ fuel products shipper license from the department of
19 ~~revenue~~ by filing with ~~that~~ the department an application prescribed and furnished
20 by ~~that~~ the department and verified by the owner of the business if the owner is an
21 individual, by a member if the owner is an unincorporated association, by a partner
22 if the owner is a partnership, or by the president and secretary if the owner is a
23 corporation.

24 **SECTION 52.** 168.12 (8) (a) of the statutes is renumbered 77.9982 (7) (a) and
25 amended to read:

1 77.9982 (7) (a) To protect the revenues of this state, the department of revenue
2 may require any person who is liable to ~~that~~ the department for the fee under sub.
3 (1) to place with it security in the amount that ~~that~~ the department determines. The
4 department of revenue may increase or decrease the amount of the security, but that
5 amount may not exceed 3 times the person's average monthly liability for the fee
6 under sub. (1) as estimated by ~~that~~ the department. If any person fails to provide that
7 security, the department of revenue may refuse to issue a license under sub. (7) (6)
8 or s. 78.09 or may revoke the person's license under sub. (7) (6) or s. 78.09. If any
9 taxpayer is delinquent in the payment of the fee under sub. (1), the department of
10 revenue may, upon 10 days' notice, recover the fee, interest, penalties, costs, and
11 disbursements from the person's security. The department of revenue may not pay
12 interest on any security deposit.

13 **SECTION 53.** 168.12 (8) (b) of the statutes is renumbered 77.9982 (7) (b) and
14 amended to read:

15 77.9982 (7) (b) The security required under par. (a) may be a surety bond
16 furnished to the department of revenue and payable to this state. The department
17 of revenue shall prescribe the form and contents of the bond.

18 **SECTION 54.** 168.12 (8) (c) of the statutes is renumbered 77.9982 (7) (c) and
19 amended to read:

20 77.9982 (7) (c) The surety of a bond under par. (b) may conditionally cancel the
21 bond by filing written notice with the person who is liable for the fee under sub. (1)
22 and with the department of revenue. A surety who files that notice is not discharged
23 from any liability that has accrued or from any liability that accrues within 60 days
24 after the filing. If the person who is liable for the fee under sub. (1) does not, within
25 60 days after receiving the notice, file with the department of revenue a new bond

1 that is satisfactory to ~~that~~ the department, ~~that~~ the department shall revoke the
2 person's license under sub. ~~(7)~~ (6) or s. 78.09. If the person furnishes a new bond, the
3 department ~~of revenue~~ shall cancel and surrender the old bond when it is satisfied
4 that all liability under the old bond has been discharged.

5 **SECTION 55.** [✓] 168.12 (8) (d) of the statutes is renumbered 77.9982 (7) (d) and
6 amended to read:

7 77.9982 (7) (d) If the liability on the bond is discharged or reduced or if the
8 department ~~of revenue~~ determines that the bond is insufficient, ~~that~~ the department
9 shall require additional surety or new bonds. If any person who is liable for the fee
10 under sub. (1) fails to file that additional bond within 5 days after the department
11 ~~of revenue~~ provides written notice, that person's license under sub. ~~(7)~~ (6) or s. 78.09
12 is revoked.

13 **SECTION 56.** [✓] 168.12 (8) (e) of the statutes is renumbered 77.9982 (7) (e) and
14 amended to read:

15 77.9982 (7) (e) Suspension, revocation or cancellation of a license under sub.
16 ~~(7)~~ (6) or s. 78.09, partial recovery on the bond or execution of a new bond does not
17 affect the validity of a bond under this subsection.

18 **SECTION 57.** [✓] 168.12 (9) of the statutes is renumbered 77.9982 (8).

19 **SECTION 58.** [✓] 168.125 of the statutes is renumbered 77.9983 and amended to
20 read:

21 **77.9983 Reports; payment.** Persons who are liable for the fee under this
22 ~~chapter~~ subchapter shall state the number of gallons of petroleum fuel products on
23 which the fee is due and the amount of their liability for the fee in the reports under
24 s. 78.12 (1) to (3). The requirements for payment of the motor vehicle fuel tax under
25 s. 78.12 (5) apply to the fee under this ~~chapter~~ subchapter.

✓
SECTION 59. 168.13 of the statutes is amended to read:

168.13 **Required records.** Every person receiving ~~petroleum~~ fuel products in this state shall keep books and records of all ~~petroleum~~ fuel products so received, together with bills of lading, waybills, and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by ~~the department and its inspectors, and are subject to inspection by the department of revenue in regard to the fee under s. 168.12 (1) an inspector.~~ Such books, records and other papers and documents shall be preserved for not less than 4 years, unless the department, and the department of revenue under s. 77.9984, in writing, ~~authorizes~~ authorize their destruction or disposal at an earlier date.

✓
SECTION 60. 168.14 (title) of the statutes is repealed and recreated to read:

168.14 (title) **Mislabeling.**

✓
SECTION 61. 168.14 (2) of the statutes is amended to read:

168.14 (2) No person may receive, unload, use, sell, or offer for sale in this state, any ~~gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other petroleum distillates which~~ product that the person knows, or reasonably should know, is misidentified as to name or grade. Gasoline-ethanol blends that are identified in compliance with s. 168.11 when sold at retail are correctly identified as to name. Biodiesel blends that are identified in compliance with sub. (2m) (c) 4. when sold at retail are correctly identified as to name.

✓
SECTION 62. 168.14 (2m) (b) 3. of the statutes is amended to read:

168.14 (2m) (b) 3. The fuel meets all of the applicable requirements of ~~the American Society for Testing and Materials~~ ASTM International.

✓
SECTION 63. 168.14 (2m) (c) 3. of the statutes is amended to read:

1 168.14 **(2m)** (c) 3. The fuel meets all of the applicable requirements of ~~the~~
2 ~~American Society for Testing and Materials~~ ASTM International.

3 **SECTION 64.** 168.16 (2) of the statutes is amended to read:

4 168.16 **(2)** Any accident or explosion involving fuel products of petroleum which
5 comes to the knowledge of the department shall be investigated to determine
6 whether or not there has been a violation of this chapter.

7 **SECTION 65.** 168.16 (3) of the statutes is amended to read:

8 168.16 **(3)** The department may, upon request of state agencies or local
9 authorities, assist in the investigation of hazardous situations involving suspected
10 or known fuel products of petroleum.

11 **SECTION 66.** 168.17 of the statutes is amended to read:

12 **168.17 Attorney general and district attorney to prosecute.** Upon
13 request of the department, the attorney general or proper district attorney shall
14 prosecute any action to enforce this chapter ~~except the fee that is imposed under s.~~
15 ~~168.12 (1).~~

16 **SECTION 67.** 168.18 of the statutes is repealed.

17 **SECTION 68.** 227.01 (13) (zd) of the statutes is amended to read:

18 227.01 **(13)** (zd) Establishes procedures for oil fuel product inspection fee
19 collection under s. ~~168.12~~ 77.9982.

20 **SECTION 69.** 341.45 (1g) (a) of the statutes is amended to read:

21 341.45 **(1g)** (a) Except as provided in subs. (3) and (4g), every person who
22 purchases or obtains motor vehicle fuel or an alternate fuel outside of this state and
23 operates any qualified motor vehicle into this state upon a highway and transports
24 that fuel in an attached or unattached fuel supply tank for the sole purpose of
25 operating the qualified motor vehicle shall pay the Wisconsin motor vehicle fuel or

1 alternate fuels tax and the ~~oil~~ fuel product inspection fee under s. ~~168.12 77.9982~~ on
2 the gallons consumed by the qualified motor vehicle while operated on the highways
3 of this state. The person shall pay the tax and fee by purchasing motor vehicle fuel
4 or alternate fuels within this state in an amount that is equivalent to the gallonage
5 consumed while operating the qualified motor vehicle on the highways of this state,
6 or by remitting the tax and fee directly to the department or to another jurisdiction
7 that is a party to the international fuel tax agreement.

8 **SECTION 70.** [✓] 341.45 (2) of the statutes is amended to read:

9 341.45 (2) Every person regularly or habitually operating qualified motor
10 vehicles upon the highways of any other state and using in those qualified motor
11 vehicles motor vehicle fuel or an alternate fuel purchased or obtained in this state
12 shall be allowed a credit or refund equal to the ~~oil~~ fuel product inspection fee and the
13 tax on the motor vehicle fuel or alternate fuel actually paid to the state in which it
14 is used, but not to exceed the tax and fee imposed on motor vehicle fuel or alternate
15 fuels by this state.

16 **SECTION 71.** [✓] 341.45 (4m) of the statutes is amended to read:

17 341.45 (4m) All ~~oil~~ fuel product inspection fees paid to the department of
18 transportation under sub. (1g) (a) in excess of ~~oil~~ fuel product inspection fee credits
19 or refunds under sub. (2) shall be deposited in the petroleum inspection fund. All ~~oil~~
20 fuel product inspection fees credited or refunded by the department of transportation
21 under sub. (2) in excess of ~~oil~~ fuel product inspection fees paid to the department of
22 transportation under sub. (1g) (a) shall be paid from the petroleum inspection fund.

23 **SECTION 72.** [✓] 341.45 (5) of the statutes is amended to read:

24 341.45 (5) The department shall promulgate rules under ch. 227 necessary to
25 administer this section. The rules shall include provisions relating to the issuance

1 and use of the permits authorized under sub. (4g). The rules may include provisions
2 relating to the payment of interest on late payments of motor vehicle fuel and
3 alternate fuels taxes and ~~oil~~ fuel product inspection fees, and fees for the late
4 payment or underpayment of motor vehicle fuel and alternate fuels taxes and ~~oil~~ fuel
5 product inspection fees.

6 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

12/16/09 - Redraft instructions from Don Syke

move ch. 77 subch XIV as created in draft
so that it is a subch of ch. 78 instead

Also - add analysis -
prepare as /P4

Subch V - ch. 78